

REMARKS

Claims 1-10, 14-18, and 30-37 were examined in the present application. Through the present response, independent claims 1, 14, 34, 36, and 37 have been amended. The Applicants reserve the right to pursue any or all of the original claims at a later time, either within the present application or in future application(s). The Applicants do not believe any new matter has been introduced by these amendments. In view of the foregoing amendments and following remarks, the Applicants respectfully request reconsideration of the rejections and allowance of the Application.

Rejections Under 35 U.S.C. § 103

The Examiner asserts that claims 1, 2, 5-10, 14, 15, 36, and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable U.S. Pub. No. 2002/0198930 (*Jones*) in view of U.S Pub. No. 2002/0046232 (*Adams*), and further in view of U.S. Pub. No. 2004/0172476 (*Chapweske*). *Office Action*, 4. The Examiner also asserts that claims 3, 4, 16, 17, 18, and 30-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jones* in view of *Adams*, further in view of *Chapweske*, and still further in view of other various references. *Office Action*, 9, 11-13. The Applicants respectfully traverse because claims 1-10, 14-18, and 30-37 are patentable, at least, because the cited references fail to disclose retrieving specified content from content servers when a delivery guarantee is not satisfied by clients in a peer-to-peer network, and because *Jones* and *Adams* teach away from the claimed invention.

The Cited References Fail to Disclose Retrieving Specified Content from Content Servers When a Delivery Guarantee is not Satisfied by Clients in a Peer-to-Peer Network.

In the previous response dated July 13, 2009 (*Response C*), the Applicants argued that the cited references fail to disclose “specified content being retrieved from the dedicated content server . . . to satisfy a delivery guarantee of the specified content,” in reference to independent claim 1. See *Response C*, 13. The Examiner countered by stating that “[t]he prior art meets the claim element, because it does retrieve content in the former situation. The prior art need not read on the second part of the element as it is included after an ‘or’ statement.” *Office Action*, 3.

Without conceding to the Examiner’s rejections and for the purpose of expediting prosecution, independent claim 1 has been amended to eliminate the recitation of the conjunctive ‘or.’ More specifically, independent claim 1 now explicitly sets forth that “the specified content is retrieved from . . . one or more of the content servers in the peer-to-peer network when a delivery guarantee of the specified content is not satisfied by the other clients in the peer-to-peer network.” The Examiner has not provided any evidence that the cited references disclose retrieving content from a content server such that a delivery guarantee is satisfied. Additionally, the Applicants observe that the cited references do not even mention ‘delivery guarantees’—no less retrieving specified content from content servers when a delivery guarantee is not satisfied by clients in a peer-to-peer network.

To support a conclusion that the claim would have been obvious requires that **all the claimed elements were known in the prior art** and that one skilled in the art could have combined those elements. See *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007)(emphasis added); see also MPEP § 2143. Since the cited references fail to disclose all of the elements set forth in independent claim 1, particularly in relation to a ‘delivery guarantee,’ the Applicants contend that claim 1 is patentable over the cited references.

Jones and Adams Teach Away from the Claimed Invention.

Both *Jones* and *Adams* are directed to serial download schemes. Serial downloading schemes represent a fundamentally different approach than that set forth in independent claim 1, which requires “retrieving the specified content in parallel from multiple content sources.” The Examiner counters that because serial downloading and parallel downloading “are directed to a common field and one of ordinary skill in the art ... would be aware of both techniques,” advocacy of one technique over the other does not constitute teaching away from the claimed invention. The Applicants respectfully submit that field of invention and awareness by one of ordinary skill in the art have no pertinence to teaching away from the claimed invention.

A *prima facie* case of obviousness may be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997). Since *Jones* and *Adams* teach serial download schemes rather than a parallel download scheme, both *Jones* and *Adams* teach away from the claimed invention. As such, a *prima facie* case of obviousness is lacking and the rejection of independent claim 1 under 35 U.S.C. § 103(a) is overcome.

Claims 2-10, 14-19, and 30-37 are Patentable for at least the Same Reasons as Independent Claim 1.

The Applicants have demonstrated that independent claim 1 is patentable over the cited references because (at the least) the cited references fail to disclose “the specified content is retrieved from one or more of the content servers in the peer-to-peer network when a delivery guarantee of the specified content is not satisfied by the other clients in the peer-to-peer network,” and, further, because *Jones* and *Adams* teach away from the claimed invention. Since independent claims 14, 34, 36, and 37 include elements similar to those of independent claim 1, claims 14, 34, 36, and 37 are patentable for at least the

same reasons. Furthermore, as a dependent claim incorporates by reference all the limitations of the claim from which it depends (see 35 U.S.C. § 112 ¶ 4), dependent claims 2-10, 15-19, 30-33, and 35 are also patentable for at least the same reasons as the independent claim from which they depend.

CONCLUSION

The rejection under 35 U.S.C. § 103(a) of claims 1-10, 14-19, and 30-37 is overcome, at least, because the cited references fail to disclose retrieving specified content from content servers when a delivery guarantee is not satisfied by clients in a peer-to-peer network. Additionally, a *prima facie* case of obviousness is lacking because *Jones* and *Adams* teach away from the claimed invention.

Submitted concurrently with the present Response is a Request for Continued Examination with the appropriate fees. Based on the foregoing remarks, the Applicants believe the rejections to the claims have been overcome and that the present Application is in condition for allowance. The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
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